1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JUDITH J. LOACH Deputy Attorney General State Bar No. 162030 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-5604 Facsimile: (415) 703-5480 E-mail: Judith.Loach@doj.ca.gov Attorneys for Complainant	
9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:	Case No. 2013 - 208
12	MARCIA LANGBEN	
13	AKA MARCIA MARIE LANGBEN AKA MARCIA MCGUINNESS 203 East Belle Vue	ACCUSATION
14	San Mateo, CA 94401	
15	Registered Nurse License No. 444406	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
22	Consumer Affairs.	
23	2. On or about August 31, 1989, the Board of Registered Nursing issued Registered	
24	Nurse License Number 444406 to Marcia Langben, aka Marcia Marie Langben, aka Marcia	
25	McGuinness ("Respondent"). The Registered Nurse License was in full force and effect at all	
26	times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.	
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### JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.
- 6. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

#### DISCIPLINARY STATUES

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct . . .
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
  - 8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this

chapter to do any of the following:

. . .

- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.
- 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

#### COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Criminal Conviction)

11. Respondent is subject to disciplinary action under Code sections 2761(f), 2762(c), and/or 490 in that on October 31, 2003, in a criminal proceeding entitled *The People of the State of California v. Marcia Marie Langben*, Marin County Superior Court Case No. SC130620A, Respondent was convicted by her plea of guilty to a felony violation of Vehicle Code section 23152(b) [driving with a blood alcohol level above 0.08%], admitting that within seven (7) years

of her conviction, she had three (3) prior convictions for driving while under the influence of alcohol and/or driving with a blood alcohol level of 0.08% or more. Respondent was sentenced to one (1) year in custody of the Marin County Sheriff's Department, placed on five (5) years supervised probation, declared to be a habitual traffic offender, had her driver's license suspended for four (4) years, ordered to enter and complete a residential treatment program, attend 12-step meetings and to participate in any treatment/therapy and/or counseling as directed by her probation officer. Respondent was also ordered to pay fines in the amount of \$ 2,605.00.

The facts in support of the convictions were that on July 13, 2003, at 11:10 p.m., Respondent was seen weaving while driving along Tiburon Boulevard, Tiburon, California. Upon contact, Respondent displayed indicia of alcohol intoxication and failed roadside field sobriety tests. Her blood alcohol level was 0.13%, 0.10% and 0.12%.

## SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Criminal Conviction)

12. Respondent is subject to disciplinary action under Code sections 2761(f), 2762(c), and/or 490 in that on June 21, 2001, in a criminal proceeding entitled *The People of the State of California v. Marcia Marie Langben*, Marin County Superior Court Case No. SR01003311, Respondent was convicted by her plea of guilty to a felony violation of Vehicle Code section 23152(a) [driving while under the influence of alcohol], and a misdemeanor violation of Vehicle Code section 14601.5(a) [driving on a suspended/revoked driver's license]. Respondent was sentenced to seven (7) months in the custody of the Marin County Sheriff's Department, five (5) years of supervised probation, ordered to complete alcohol treatment programs and therapy, had her driver's license suspended for four (4) years and ordered to pay fines in the amount of \$2,2205.00.

The facts in support of the convictions were that on April 5, 2001, at 4:02 p.m., San Rafael Police were dispatched to a business at 145 Jordon Avenue, San Rafael, California, on report of a intoxicated person who was attempting to start her vehicle. Respondent displayed indicia of alcohol intoxication, failed field sobriety testing and admitted to the officers that her first drink had been at 10:00 a.m. Her blood alcohol level was 0.20% and 0.19%.

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## THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Criminal Conviction)

13. Respondent is subject to disciplinary action under Code sections 2761(f), 2762(c), and/or 490 in that on January 25, 2001, in a criminal proceeding entitled *The People of the State of California v. Marcia Marie McGuinness*, Santa Clara County Superior Court, Case No. CC075153, Respondent was convicted by her plea of no contest to a violation of Vehicle Code section 23152(a) [driving while under the influence of alcohol], with a reported blood alcohol level of 0.20%. Respondent was sentenced to six (6) months in the county jail, three (3) years of formal probation, had her driver's license revoked for three (3) years and ordered to pay fines in the amount of \$ 1,521.00.

## FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Using Alcohol in a Dangerous Manner)

14. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(b) for the use of alcoholic beverages, to an extent and in a manner dangerous or injurious to herself, any other person, or the public. The facts in support of this cause of for discipline are set forth above in paragraphs 11 through 13.

In addition, on or about July 17, 2011, Respondent was arrested in Mountain View, California, for a violation of Penal Code section 647(f) [public intoxication]. The circumstances regarding her arrest were that at 9:35 p.m., police were dispatched to a residence in Mountain View on report of a drunk female lying in a driveway who was screaming. Respondent displayed indicia of alcohol intoxication and based on the officer's belief that she would be unable to care for herself, she was arrested and transported to jail.

## DISCIPLINARY CONSIDERATIONS

15. On or about July 20, 1995, in a criminal proceeding entitled *The People of the State of California v. Marcia McGuiness* (sic), Santa Clara County Municipal Court, Case No. B9522247, Respondent pled no contest to a violation of Vehicle Code section 23152(b). Respondent was sentenced to seven (7) days of weekend work as directed by the Santa Clara County Jail, placed on three (3) years of court probation, ordered to complete the First Offender Alcohol Program and

1	pay fines in the amount of \$ 1,1311.00.	
2	<u>PRAYER</u>	
3	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
4	and that following the hearing, the Board of Registered Nursing issue a decision:	
5	1. Revoking or suspending Registered Nurse License Number 444406, issued to Marcia	
6	Langben, aka Marcia Marie Langben, aka Marcia McGuinness;	
7	2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of	
8	the investigation and enforcement of this case, pursuant to Business and Professions Code section	
9	125.3;	
10	3. Taking such other and further action as deemed necessary and proper.	
11	DATED C.	
12	DATED: September 24, 2012 Souch K. Souly Louise R. BAILEY, M.ED., R.	
13	Executive Officer Board of Registered Nursing	
14	Department of Consumer Affairs State of California	
15	Complainant	
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